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Labor and Employment Update: Senate Passes the ADA Amendments Act

By Ronald J. Stolkin

On September 11, the U.S. Senate unanimously passed the ADA Amendments Act of 2008 ("ADAAA"). The bill came only after compromise was reached by employer and business groups and disability rights groups. The Senate version of the bill has a few so-called "employer-friendly" changes. The bill now will return to the House where it could be voted on as early as next week. President Bush is expected to sign the legislation.

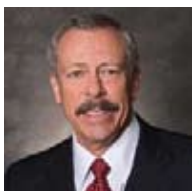
The bill overturns Supreme Court precedent, specifically prohibiting the consideration of mitigating measures such as medication, prosthetics, and assistive technology in determining whether an individual is disabled. The bill does, however, permit consideration of standard vision correction achieved through normal glasses or contact lenses.

Debate in the House and the Senate centered on Congress's attempt to define the term "substantially limits" under the Americans with Disabilities Act. Coverage under the ADA turns in large part on whether an individual is "substantially limited" in the ability to perform "major life activities." Because of court decisions that have narrowly interpreted "substantially limits," Senate Democrats had sought to widen the ADA's coverage by more broadly defining the term. Language in the House bill (H.R. 3195) that passed the House of Representatives on June 25, defined the term to mean "materially restricts," although the House bill provided no definition for this term. After vocal objections that using the less stringent "materially restricts" definition would bring many new and relatively minor impairments under the coverage of the ADA, a bipartisan compromise resulted in omission of the "materially restricts" language. The broader coverage envisioned under the ADAAA is contained in the Act's preliminary section on Congressional findings and purposes.

The bill also affords broad coverage for individuals regarded as having a disability under the ADA, but includes a provision that accommodations need not be made to someone who is disabled solely because he or she is regarded as having a disability.

The ADAAA will make it harder for employers to argue that an individual is not "disabled" within the meaning of the Act. This means that more reasonable accommodation requests and decisions, as well as more discrimination charges and lawsuits, can be expected. Employers must be sure that their Human Resources and operations management are up to date on their legal obligations and handle accommodation requests appropriately.

Ronald J. Stolkin is co-chair of the firm's labor and employment law practice. Mr. Stolkin counsels management on personnel practices, employee discipline and labor relations. He defends employers in litigation alleging employment discrimination, breach of contract, wrongful discharge and other employment related torts. He has counseled clients on a wide range of employment issues including employment handbooks and personnel policies, employment-at-will issues, wage/hour issues, drug and alcohol policies, sexual issues, employee disability issues, and leave of absence issues. He earned his B.A. (1967) and J.D. (1978) from The University of Arizona.



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